

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 1131 of 1993

For Approval and Signature:

Hon'ble MR.JUSTICE M.C.PATEL

- =====
1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the concerned : NO
Magistrate/Magistrates, Judge/Judges, Tribunal/Tribunals?

STATE OF GUJARAT

Versus

VELSING B RATHVA

Appearance:

MR KP RAWAL, APP for Appellant
MR JM BUDDHBHATTI for Respondent No. 1

CORAM : MR.JUSTICE M.C.PATEL

Date of decision: 17/04/2003

ORAL JUDGEMENT

1. This appeal by the State under Section 378 of the Criminal Procedure Code is directed against the judgment and order dated 5th June, 1993 passed by the Joint

Judicial Magistrate (First Class), Chhota Udepur in Criminal Case No.2501 of 1989 whereby the learned Magistrate acquitted the respondent of the offences under Sections 279, 304-A, 337 and 338 of the I.P.C. and Sections 112, 116 and 93 of the Motor Vehicles Act.

2. It is not in dispute that on 20th May, 1989, the respondent was driving a truck on the road between Rumadia and Bedia in Taluka Chhota Udepur. About 25-30 persons, who belonged to a marriage party, were travelling in the truck. The truck overturned in the sim of village Rumadia at about 5 o'clock in the evening. The respondent immediately rushed to the police station at Kuwant and lodged a report of the accident. According to him, when they reached the road in the sim of village Rumadia, a matador came from the opposite side and since there was a bend in the road, he tried to slow down the truck but the brakes failed and the truck went off the road and overturned. Some persons sitting in the truck were crushed under the truck. Other persons were also injured. Feeling afraid that he would be beaten, he ran away and came to the police station to report the accident.

3. After investigation, the police submitted the chargesheet for the offences set out above.

4. It is not in dispute that six persons were killed in the accident and a number of other persons were injured. At the trial, as many as seven witnesses, who were travelling in the truck, were examined. However, all of them said that the truck was going slowly down a slope but a tempo suddenly emerged around the bend from the opposite direction and though the respondent tried to stop the truck, the brakes failed and the truck overturned.

5. In his further statement under Section 313 of the Criminal Procedure Code, the respondent said that the brake-pipe was broken and the truck overturned when he tried to take it to the side to avoid collision with the tempo which was coming from the opposite direction.

6. The learned Magistrate, in view of this evidence and the version given by the respondent in his report to the police and considering the fact that no mechanical report of the brake was produced by the prosecution, came to the conclusion that the prosecution had failed to prove the charges against the respondent beyond reasonable doubt.

7. Shri K.P. Rawal, learned APP took me through the evidence on record. However, there is nothing in the oral evidence of the witnesses to show that the respondent was, in any manner, negligent. The view taken by the learned Magistrate is quite reasonable and, in the facts of the case, no interference with the order of acquittal is called for. The appeal, therefore, fails and is dismissed.

(M.C. Patel, J.)

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